

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-947

DANA YANCEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

**Opinion Delivered** March 18, 2009

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
[NO. JJN2006-2164]

HONORABLE WILEY A. BRANTON,  
JR., JUDGE

AFFIRMED

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**WAYMOND M. BROWN, Judge**

Dana Yancey appeals from the circuit court’s termination of her parental rights in K.Y. (born August 5, 2001); twins K.Y. and D.Y. (born August 3, 2002); and B.R. (born August 13, 2006). Yancey argues that the evidence was insufficient to warrant termination. We affirm.<sup>1</sup>

On November 5, 2006, the Arkansas Department of Human Services (DHS) placed a seventy-two-hour hold on Yancey’s children after her husband, Brett Robinson, “hog-tied” four-year-old K.Y. in the driveway of their home. The circuit court granted emergency custody of the children to DHS on November 7, 2006, and entered a probable-cause order on November 16, 2006.

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<sup>1</sup> The court also terminated the parental rights of the children’s biological fathers, Terry Yancey and Brett Robinson, who are not parties to this appeal.

On January 16, 2007, the circuit court adjudicated the children dependent-neglected. The court found that Yancey failed to protect her son from being abused and that Yancey's and Robinson's actions constituted aggravated circumstances. The court also gave credence to Robinson's testimony that appellant had a significant drug problem. The adjudication order established a goal of reunification and directed Yancey to obtain and maintain stable housing and employment; to submit to a psychological evaluation and follow recommendations; to submit to a drug-and-alcohol assessment and follow recommendations; to submit to random drug and alcohol screens; and to attend parenting classes and individual counseling.

In February 2007, Dr. Paul Deyoub conducted a psychological evaluation of Yancey and reported that she had a history of drug addiction and a severe personality disorder. The evaluation also stated that Yancey had been married to two "psychopaths" with histories of drug addiction and incarceration and that Yancey had suffered serious abuse at the hands of Brett Robinson. According to the evaluation, Yancey stated that she intended to divorce Robinson. Dr. Deyoub recommended drug treatment, parenting classes, and individual therapy.

In May and June 2007, the circuit court entered review orders continuing the goal of reunification and finding that the children suffered from post-traumatic stress disorder. On October 29, 2007, the court entered a permanency-planning order that reflected DHS's and the attorney ad litem's recommendation that the court continue the goal of reunification, based on Yancey's participation in a drug-treatment program. The court "begrudgingly" accepted the recommendation but stated the following:

There has been a finding by the Court of aggravated circumstances. The mother was “awol” in April and has tested positive for drugs through August. She has just now completed a thirty-day residential drug rehabilitation program, and must continue to comply with discharge regulations. Thus the Court is not impressed with the mother’s progress. The mother has not just a chronic drug problem of long duration, but also has a personality disorder and a psychological profile that is very discouraging regarding the prospect of reunification. The Court is not sure that the mother is capable of providing a stable home for her children. Reunification is a long shot .... The mother must realize that her time to achieve reunification is limited and she must get her act together.

Three months later, on January 28, 2008, the court entered a second permanency-planning order that changed the goal of the case to termination of parental rights. The order stated that Yancey failed to participate in an outpatient drug-treatment program; that she stopped attending counseling; that she moved to Malvern without informing DHS; that she continued to be unemployed; that she failed to attend a recent staffing; and that she had a prescription for hydrocodone for an alleged dental problem, even though she had not undergone treatment.

The court held a termination hearing on April 29, 2008, by which time the children had been out of the home for seventeen months. Dr. Deyoub testified that Yancey suffered from methamphetamine, cannabis, and opiate abuse and that she had a borderline/dependent personality disorder. He further stated that Yancey had been involved in abusive relationships, with a potential for others in the future. Dr. Deyoub recounted that Yancey began a relationship with Brett Robinson shortly before Robinson went to prison and that she stayed with Robinson after his release, even though she barely knew him. Dr. Deyoub said that, after Yancey became pregnant, Robinson beat her so severely in January 2006 that he was charged with a felony, and Yancey’s wounds required eight stitches or staples. The doctor further

testified that Yancey reconciled with Robinson in April 2006 and later married him. The doctor said that he would expect Yancey's behavior to recur if she did not complete her drug-treatment program and individual counseling. Dr. Deyoub stated on cross-examination that personality disorders such as Yancey's could be treated through long-term treatment, although given Yancey's circumstances, it would require a "huge accomplishment" for her to make major changes in a short period of time. He explained to the court that, in essence, his testimony was that Yancey's prognosis for reunification was poor.

Caseworker Mary Anderson testified that DHS referred Yancey for individual counseling but that Yancey stopped attending in March 2007, after approximately two months. Anderson said that Yancey then "disappeared" and missed visits with her children. Anderson also said that Yancey completed residential drug treatment but "walked out" of an after-care facility in early December 2007. According to Anderson, she could not locate Yancey for a period of time thereafter. Anderson believed that Yancey currently lived in a rental home in Malvern and apparently had a job in a restaurant. However, neither Anderson nor the Malvern DHS worker had been able to maintain regular contact with Yancey. Anderson also offered testimony and documentary evidence that Yancey tested positive for marijuana, opiates, or both on eight occasions between December 2006 and January 2008 (with some negative tests as well) and that Yancey refused or failed to show up for drug screens eight times between January 2007 and March 2008.

Pam Dodson, a licensed professional counselor who worked with the twin boys, said that one of the twins, K.Y., had acute behavioral problems. She testified that the sooner K.Y.

was placed in a stable environment, the more he would benefit. Adoption specialist Kasheena Walls testified that the children were adoptable and that they matched some families on her data base.

Lisa Ramsey, another therapist for the twins, testified that Yancey acted appropriately during visits with the children. Ramsey also stated that Yancey provided the children with a great deal of nurturing and affection and that Yancey and the children had a strong bond. Ramsay said that she could not make a recommendation regarding whether the children should not see Yancey.

Tiffany Estes, a licensed social worker who counseled Yancey's daughter, K.Y., testified that Yancey's visits with K.Y. went well and that Yancey rarely missed a visit. However, Estes said that she would not be comfortable with K.Y.'s returning to Yancey, given Yancey's positive drug screens, history of drug abuse, failure to complete her outpatient treatment, and unstable home and employment situation.

Yancey testified that her housing situation was no longer unstable because she had leased a residence in Malvern approximately one month before the hearing. Yancey recounted that she had lived with her mother in Little Rock at the start of the case in November 2006 but became uncomfortable in Little Rock. She then moved to Lonoke in April 2007 and lived with a male friend, whose last name she could not recall, and she stayed there until she entered drug treatment later in 2007. In December 2007, Yancey left the drug treatment's after-care facility early due to a conflict with another resident. She then moved to Malvern and lived with her sister before obtaining her current residence. Yancey said she understood

that her moving around made it difficult to receive services.

Yancey further testified that her employment situation had stabilized. She said that she obtained a job in a restaurant approximately two months prior to the hearing and that she had also helped out her sister's boyfriend's mother, for which she received an unspecified amount of pay. Yancey said that she had been employed while she was in drug treatment (in mid to late 2007), but that her only other employment was prior to her move to Lonoke in April 2007.

Yancey testified that she had not used marijuana, despite her positive tests, and she said that she could account for her positive tests for opiates. She produced a prescription for Ultram, which she obtained for knee pain about ten days before the hearing. Yancey also said that she was aware of an outstanding warrant for her in Lonoke County on a public intoxication charge. She further testified that she had not had the opportunity to attend individual counseling or NA meetings.

Based on the foregoing evidence, the circuit court entered an order terminating Yancey's parental rights. The court found that termination was in the children's best interest and that DHS had proved, as grounds for termination, that the children were adjudicated dependent-neglected and continued out of Yancey's custody for more than twelve months and, despite a meaningful effort by DHS to rehabilitate Yancey and correct the conditions that caused removal, those conditions were not remedied by Yancey. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Repl. 2008). The termination order noted Yancey's early exit from her drug-treatment facility; her positive drug screen in January 2008, which occurred after her

attendance at the drug-treatment program; her use of prescription drugs, despite her abuse history; Dr. Deyoub's evaluation, which included Yancey's personality disorder and her history of abusive relationships and poor judgment; Yancey's outstanding warrant from Lonoke County; and Yancey's acquisition of a home and employment only in the past two months. The court stated that "Seventeen months after removal, it remains unforeseeable when the children might be returned to Ms. Yancey." Yancey appeals from that order.

An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence: 1) that termination is in the children's best interest, including consideration of the likelihood that the children will be adopted and of the potential harm in returning the children to the parent; and 2) that at least one statutory ground exists. Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2008). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. *Williams v. Ark. Dep't of Human Servs.*, 99 Ark. App. 95, 257 S.W.3d 574 (2007). When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. *See id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

We review termination-of-parental-rights cases de novo. *See id.* However, we give a high degree of deference to the circuit court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Id.*

Yancey argues that the circuit court erred in finding that termination was in the children's best interest because DHS failed to prove potential harm in returning the children to her. We note at the outset that our termination statute does not require DHS to prove by clear and convincing evidence that there is potential harm in returning the children to the parent. Rather, potential harm is a factor that the court must consider. After consideration of *all* factors, the evidence must be clear and convincing that the termination is in the best interest of the children. See *Jones-Lee v. Ark. Dep't of Human Servs.*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Mar. 4, 2009); *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, \_\_\_ S.W.3d \_\_\_ (2008); *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Additionally, the harm referred to in the termination statute is "potential" harm. The circuit court is not required to find that actual harm would result or to affirmatively identify a potential harm. *Lee, supra*. The harm analysis is to be conducted in broad terms. *Id.*

With these authorities in mind, we conclude that the circuit court did not clearly err in finding that termination of parental rights was in the children's best interest. The proof demonstrates that Yancey had a history of drug abuse, both before and during the case. She tested positive or failed to submit to drug screens numerous times between December 2006 and March 2008, with one positive test occurring after she left a drug-treatment facility. Yancey also failed to complete her drug treatment. Continued drug use during the case, refusal to submit to drug screens, and an untreated drug-abuse problem are factors our courts have considered in affirming a termination order. *Long v. Ark. Dep't of Human Servs.*, 369 Ark. 74, 250 S.W.3d 560 (2007); *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148



S.W.3d 780 (2004).

Yancey contends that her positive tests for opiates are attributable to a prescription for hydrocodone. A parent's attempt to justify a positive drug test is a matter for the circuit court's credibility determination. *See Posey v. Ark. Dep't of Human Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007). Yancey's drug screens show that she presented a prescription for hydrocodone to the tester on December 12, 2007. However, the prescription does not explain her positive tests for opiates in the twelve months before that, nor does it explain her positive tests for marijuana.

Yancey argues further that she needs more time to continue the improvement she has recently begun. However, the fact that a parent begins to make improvement as termination becomes more imminent will not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed in the first place or that caused the children to remain outside the home. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005); *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005); *Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004). *Lee, supra*. Yancey's history reflects her repeated failure to comply with court orders that she obtain stable housing and employment, obtain drug treatment, and remain drug free. The court gave Yancey additional time to remedy her circumstances in October 2007, which was approximately one year into the case. However, Yancey did not seize the opportunity. Instead, she left the drug-treatment facility, tested positive for marijuana, and left town without informing DHS. There was virtually no compliance on Yancey's part until just prior

to the termination hearing. As the circuit court stated, “Seventeen months after removal, it remains unforeseeable when the children might be returned to Ms. Yancey.” The intent of our termination statute is to provide permanency in a juvenile’s life in all instances in which the return of a juvenile to the family home is contrary to the juvenile’s health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile’s perspective. Ark. Code Ann. § 9-27-341(a)(3) (Repl. 2008).

Yancey questions DHS’s efforts to provide reunification services. DHS offered proof that it provided referrals for drug treatment, counseling, and a psychological evaluation. Yet, Yancey left drug treatment prior to completion and attended counseling for only two months. She also acknowledged that her moving out of town could affect her ability to obtain services. Yancey further points to evidence of a strong bond between her and the children, and she cites therapist Lisa Ramsey’s testimony that she could not make a recommendation regarding termination. However, other witnesses did recommend termination. We defer to the circuit court on questions of witness credibility. *See Camarillo-Cox, supra*. Additionally, we cannot say that Yancey’s bond with her children outweighs the circuit court’s decision that termination was in the children’s best interest, given Yancey’s unresolved drug and psychological issues and her failure to comply with court orders during the majority of the case.

Yancey argues further that DHS did not prove grounds for termination because Brett Robinson, who hog-tied K.Y., was in prison, thus demonstrating that Yancey had remedied

“the condition that caused removal.” However, the conditions that caused removal were not limited to Robinson’s actions but included Yancey’s own drug and psychological problems that, according to the court, allowed the abuse of the child to take place. The evidence demonstrates that Yancey has failed to remedy these problems, which, according to Dr. Deyoub, puts her in danger of repeating past behavior.

For these reasons, we conclude that the circuit court did not clearly err in terminating Yancey’s parental rights.

Affirmed.

VAUGHT, C.J., agrees.

HART, J., concurs.